

AMENDED IN SENATE APRIL 2, 2013

**SENATE BILL**

**No. 327**

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**Introduced by Senator Yee**

February 19, 2013

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An act to amend ~~Section~~ *Sections 1473.5 and 4801* of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 327, as amended, Yee. Human trafficking: recall and ~~resentencing~~.  
*resentencing: pardons and parole.*

~~Existing~~

(1) *Existing* law authorizes every person who is unlawfully imprisoned or restrained of his or her liberty to prosecute a writ of habeas corpus to inquire into the cause of that imprisonment or restraint.

Existing law provides that a writ of habeas corpus based on intimate partner battering may be prosecuted if competent and substantial expert testimony relating to intimate partner battering and its effects was not presented to the trier of fact at the trial court proceedings, and is of such substance that, had it been presented, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, the result of the proceedings would have been different, and that the burden of proof in this regard is on the petitioner.

This bill would make those provisions applicable to cases in which competent and substantial expert testimony relating to human trafficking, as defined, and its effects was not presented to the trier of fact at the trial court proceedings and is of such substance that, had the competent and substantial expert testimony been presented, there is a reasonable probability, sufficient to undermine confidence in the judgment of

conviction or sentence, that the result of the proceedings would have been different.

(2) *Existing law authorizes the Board of Parole Hearings to report to the Governor, from time to time, the names of any and all persons imprisoned in any state prison who, in its judgment, ought to have a commutation of sentence or be pardoned and set at liberty on account of good conduct, or unusual term of sentence, or any other cause, including evidence of intimate partner battering and its effects. Existing law requires the Board of Parole Hearings, one year prior to an inmate's minimum eligible parole release date, to meet with the inmate to review his or her suitability for parole. As part of this review, existing law requires the board to give great weight to any information or evidence that, at the time of the crime, the person had experienced intimate partner battering, if that person was convicted of an offense that occurred prior to August 29, 1996.*

*This bill would authorize the Board of Parole Hearings to report to the Governor, from time to time, the names of any and all persons imprisoned in any state prison who, in its judgment, ought to have a commutation of sentence or be pardoned and set at liberty on account of evidence that the prisoner was a victim of human trafficking at the time of the offense. The bill would also require, as part of the review to determine a person's suitability for parole, the board to give great weight to any information or evidence that the prisoner was a victim of human trafficking at the time of the offense.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1473.5 of the Penal Code is amended to  
2     read:  
3     1473.5. (a) A writ of habeas corpus also may be prosecuted  
4     on the basis that (1) competent and substantial expert testimony  
5     relating to intimate partner battering and its effects, within the  
6     meaning of Section 1107 of the Evidence Code, or (2) competent  
7     and substantial expert testimony relating to human trafficking, as  
8     described in Section 236.1, and its effects was not presented to the  
9     trier of fact at the trial court proceedings and is of such substance  
10    that, had the competent and substantial expert testimony been  
11    presented, there is a reasonable probability, sufficient to undermine

confidence in the judgment of conviction or sentence, that the result of the proceedings would have been different. Sections 1260 to 1262, inclusive, apply to the prosecution of a writ of habeas corpus pursuant to this section. As used in this section, “trial court proceedings” means those court proceedings that occur from the time the accusatory pleading is filed until and including judgment and sentence.

(b) This section is limited to (1) violent felonies as specified in subdivision (c) of Section 667.5 that were committed before August 29, 1996, and that resulted in judgments of conviction or sentence after a plea or trial as to which expert testimony admissible pursuant to Section 1107 of the Evidence Code may be probative on the issue of culpability, or (2) cases in which the defendant is a victim of human trafficking, as described in Section 236.1.

(c) A showing that expert testimony relating to intimate partner battering and its effects or human trafficking and its effects was presented to the trier of fact is not a bar to granting a petition under this section if that expert testimony was not competent or substantial. The burden of proof is on the petitioner to establish a sufficient showing that competent and substantial expert testimony, of a nature which would be competent using prevailing understanding of intimate partner battering and its effects, or human trafficking and its effects, was not presented to the trier of fact, and had that evidence been presented, there is a reasonable probability that the result of the proceedings would have been different.

(d) If a petitioner for habeas corpus under this section has previously filed a petition for writ of habeas corpus, it is grounds for denial of the new petition if a court determined on the merits in the prior petition that the omission of expert testimony at trial relating to battered women’s syndrome or intimate partner battering and its effects or human trafficking and its effects was not prejudicial and did not entitle the petitioner to the writ of habeas corpus.

(e) For purposes of this section, the changes that become effective on January 1, 2005, are not intended to expand the uses or applicability of expert testimony on battering and its effects that were in effect immediately prior to that date in criminal cases.

*SEC. 2. Section 4801 of the Penal Code is amended to read:*

1     4801. (a) The Board of Parole Hearings may report to the  
2 Governor, from time to time, the names of any and all persons  
3 imprisoned in any state prison who, in its judgment, ought to have  
4 a commutation of sentence or be pardoned and set at liberty on  
5 account of good conduct, or unusual term of sentence, or any other  
6 cause, including evidence of intimate partner battering and its  
7 effects, *or evidence that the person was a victim of human*  
8 *trafficking at the time of the offense.* For purposes of this section,  
9 “intimate partner battering and its effects” may include evidence  
10 of the nature and effects of physical, emotional, or mental abuse  
11 upon the beliefs, perceptions, or behavior of victims of domestic  
12 violence ~~where~~ *if* it appears the criminal behavior was the result  
13 of that victimization.

14     (b) (1) The Board of Parole Hearings, in reviewing a prisoner’s  
15 suitability for parole pursuant to Section 3041.5, shall give great  
16 weight to any information or evidence that, at the time of the  
17 commission of the crime, the prisoner had experienced intimate  
18 partner battering, but was convicted of an offense that occurred  
19 prior to August 29, 1996, *or that the prisoner was a victim of*  
20 *human trafficking at the time of the offense.* The board shall state  
21 on the record the information or evidence that it considered  
22 pursuant to this subdivision, and the reasons for the parole decision.  
23 The board shall annually report to the Legislature and the Governor  
24 on the cases the board considered pursuant to this subdivision  
25 during the previous year, including the board’s decisions and the  
26 specific and detailed findings of its investigations of these cases.

27     (2) The report for the Legislature to be submitted pursuant to  
28 paragraph (1) shall be submitted pursuant to Section 9795 of the  
29 Government Code.

30     (3) The fact that a prisoner has presented evidence of intimate  
31 partner battering cannot be used to support a finding that the  
32 prisoner lacks insight into his or her crime and its causes.